(5)

DEC 23 1999

No. 99-798

In The

Supreme Court of the United States

PRISCILLA M. LIPPINCOTT ADAMS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeal For The Third Circuit

BRIEF OF AMICUS CURIAE PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS IN SUPPORT OF PETITIONER PRISCILLA M. LIPPINCOTT ADAMS

RICHARD L. BAZELON*
BAZELON LESS & FELDMAN, P.C.
1515 Market Street – Suite 700
Philadelphia, PA 19102-1907
(215) 568-1155

Attorneys for Amicus Curiae Philadelphia Yearly Meeting of the Religious Society of Friends

**Counsel of Record*

December 23, 1999

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE 1

A. Interest as a Religious Organization of Which Petitioner Is a Member 1

B. Interest as an Employer 8

ARGUMENT 11

A. The Importance of the Issue Presented by the Petition for Writ of Certiorari 11

B. The Holding by the United States Court of Appeals for the Third Circuit Is Inconsistent With the Religious Freedom Restoration Act 14

CONCLUSION 16

TABLE OF AUTHORITIES

Page

CASES:

American Friends Service Committee v. United States, 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on procedural grounds*, 419 U.S. 7 (1974) 10

City of Boerne v. Flores, 521 U.S. 507 (1997) 4, 14, 15

Employment Division v. Smith, 494 U.S. 872 (1990) 9, 14

Sherbert v. Verner, 374 U.S. 398 (1963) 14

United States v. Philadelphia Yearly Meeting of the Religious Society of Friends, 753 F. Supp. 1300 (E.D. Pa. 1990) 9

United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996) 15

United States v. Packard, 1999 WL 500797 (2d Cir. June 1, 1999) 13

STATUTES AND REGULATIONS:

28 U.S.C. § 6332(d)(2)..... 10

42 U.S.C. § 2000bb-2(3) 15

42 U.S.C. § 2000bb-1..... 15

H.R. 1454, 106th Cong., 1st Sess..... 15

MISCELLANEOUS AUTHORITIES:

Peter Brock, *The Quaker Peace Testimony, 1660 to 1914* (1979)..... 3

Bernd G. Janzen, *Communities of Conscience: Collected Statements on Conscience and Taxes for Military Preparations* (Peace Tax Foundation 2d ed.) 14

TABLE OF AUTHORITIES – Continued

Page

Declaration "Against All Plotters and Fighters in the World," addressed to Charles II by George Fox, Richard Huberthorne and ten other Friends (Jan. 21, 1661) 3

Letter from President Washington to Philadelphia Yearly Meeting of the Religious Society of Friends (rec'd 1790) 4

Philadelphia Yearly Meeting, *Faith and Practice* (1997) 7

Minutes of PYM (1776) 5

Minutes of PYM Representative Meeting (Apr. 24, 1975) 9

P.Y.M. Staff Manual, (1986 ed.) 8

The Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, Accepted by Order of the Assembly 2

INTEREST OF AMICUS CURIAE PHILADELPHIA YEARLY MEETING OF THE RELIGIOUS SOCIETY OF FRIENDS[1]

A. Interest as a Religious Organization of Which Petitioner Is a Member

The Philadelphia Yearly Meeting of the Religious Society of Friends (hereinafter, "PYM"), established in 1681, is one of the oldest bodies of the Religious Society of Friends (also known as "Quakers") in the world. A Yearly Meeting is similar to a "synod" or "archdiocese" in certain other churches. PYM currently includes approximately 12,000 members in 104 "monthly meetings," or congregations, covering the geographic area of eastern Pennsylvania, central and southern New Jersey, Delaware and the eastern shore of Maryland. PYM employs 51 full and part-time staff. Petitioner, Priscilla M. Lippincott Adams, is a member of the Haddonfield Monthly Meeting of the Religious Society of Friends, a constituent meeting of PYM. She has also been a full-time employee of PYM since 1984. Her actions which bring her before this Court are acts of religious conscience which express not only her personal convictions but also the fundamental principles, or "testimony," of the Religious Society of Friends.

This case is about freedom to exercise religion, one of the fundamental inspirations for the founding of this

---

[1] The parties have consented to the filing of this brief. Counsel for a party has not authored this brief in whole or in part, and no person or entity, other than amicus curiae or its counsel, has made a monetary contribution to the preparation or submission of the brief.

Nation and for its subsequent strength and diversity. Indeed, the case involves the religious group which established the colony of Pennsylvania so that they, and others, could freely exercise their respective religions. *See* The Charter of Privileges Granted by William Penn, Esq. to the Inhabitants of Pennsylvania and Territories, Accepted by Order of the Assembly (Philadelphia Oct. 28, 1701). Members of the Religious Society of Friends were vitally concerned in establishing the principle of the free exercise of religion in the Bill of Rights. Pet. App. A47.

The Religious Society of Friends was founded on one distinctive and fundamental religious belief, which it has consistently propounded since its inception in 1650. This is the conviction that there is "that of God" in every human being through which divine guidance is inwardly received and the conscience enlightened. Pet. App. A34. Every human being has direct access through this "Inner Light" to divine inspiration and guidance for living in accordance with God's will. Those who discern and heed the promptings of this Inner Light in their daily lives are "saved"; that is, they come into fullness and wholeness of life and right relationship with God and one another. Those who resist, ignore, or disobey this Inner Light, even if they profess religion, are "damned"; that is, doomed to unhappiness and alienation from God, from themselves, and from one another.

Friends believe that the conscience is a vehicle for the Inner Light. To disobey the dictates of one's conscience is equivalent to disobeying God. Obedience to religiously inspired conscience, therefore, is fundamental to the faith of a practicing Friend. Conscience has a particularly sacred quality for Friends. Pet. App. A41.

Given that there is that of God in every person, Friends believe that it is wrong to harm, maim or kill another person. Pet. App. A34. The Religious Society of Friends has consistently maintained, as a matter of direct revelation, corroborated by Scripture, that all war and preparation for war are contrary to the will of God and the teachings of Jesus Christ. In 1661, Friends declared:

> We utterly deny all outward wars and strife, and fighting with outward weapons, for any end, or under any pretense whatsoever; this is our testimony to the whole world. The spirit of Christ, by which we are guided, is not changeable, so as once to command us from a thing as evil and again to move us unto it; and we do certainly know, and so testify to the world, that the spirit of Christ, which leads us into all Truth, will never move us to fight and war with outward weapons, neither for the kingdom of Christ, nor for the kingdoms of this world.

Declaration "Against All Plotters and Fighters in the World" addressed to Charles II by George Fox, Richard Hubberthorne and ten other Friends (Jan. 21, 1661) (quoted in *The Journal of George Fox* 339-400). *See also* Peter Brock, *The Quaker Peace Testimony, 1660 to 1914* at 25 (Sessions Book Trust, York, England 1979).

This fundamental tenet, or Peace Testimony, of the Religious Society of Friends was recognized and respected even before the founding of this Nation. Indeed, many Quakers, including petitioner's paternal ancestors, came to this land in pursuit of religious freedom and the right not to be conscripted. President George Washington, in exempting Friends from military

service, wrote to the Philadelphia Yearly Meeting of the Religious Society of Friends in 1790 as follows:

> Government being, among other purposes, instituted to protect the Persons and Consciences of men from oppression, it certainly is the duty of the Rulers not only to abstain from it [oppression] themselves, but according to their stations to prevent it in others. . . .
>
> Your principles & conduct are well known to me. . . . I assure you very explicitly that in my opinion the Conscientious scruples of all men should be treated with great delicacy & tenderness, and it is my wish and desire that the Laws may always be as extensively accommodated to them, as a due regard to the Protection and essential Interests of the Nation may Justify, and permit.

Letter from President Washington to Philadelphia Yearly Meeting of the Religious Society of Friends (rec'd 1790) (held in the Quaker Collection at Haverford College, Haverford, Pennsylvania) (spelling, punctuation and capitalization per original) (found at Pet. App. A39-A40). *See also City of Boerne v. Flores*, 521 U.S. 507, 662 (1997) (O'Connor, J., dissenting) (quoting same letter from secondary source).

As a direct extension and expression of this historic Peace Testimony, Friends have consistently supported the refusal as a matter of religious conscience to pay taxes for purely military purposes. The Quaker founder of Pennsylvania, William Penn, refused to send money to England for a war against the French in Canada in 1711, stating:

> No man can be true to God and false to his own conscience, nor can he extort from it a tribute

> [*i.e.*, a tax] to carry on any war, much less offensive, nor ought true Christians pay for it.

Pet. App. A43-A44. And in 1776, Philadelphia Yearly Meeting Minutes stated:

> It is the judgment of this Meeting that a tax levied for the purchase of drums, colors, or for other war-like uses cannot be paid consistently with our Christian testimonies.

Minutes of PYM (1776) (held in Friends Historical Library, Swarthmore College, Swarthmore, Pennsylvania).

This tenet of the Religious Society of Friends was expressed in the PYM Minutes in 1780 in the following way:

> . . . it [is] our unanimous sense and judgment, that a living concern for the advancement of our testimony to the peaceable kingdom of Christ, by refraining from such compliances as evidently tend to war and bloodshed, still continues to spread in many minds, and a fervent desire hath prevailed amongst us, that according to the advices given forth by this meeting at sundry times . . . respecting the payment of taxes, selling of property for the use of the armies, that the members of our religious society be again exhorted strictly to attend to the monitions of divine Grace, and carefully guard against suppressing them either in themselves or others, that so they may be preserved in a conduct consistent with our holy profession . . .

Id.; Pet. App. A44.

To be sure, the great majority of PYM's members pay federal taxes, despite their objection to war. At the same time, Friends have felt a growing burden of conscience as they have watched the increasing portion of every tax dollar going to military expenditures. Pet. App. A45. PYM has reaffirmed the principle of war tax refusal in the context of present conditions, and of this case. The 1970 session of PYM re-affirmed that "refusal to pay the military portion of taxes is an honorable testimony, fully in keeping with the history and practice of Friends." Pet. App. A46. PYM further stated:

> We gladly pay the civilian part of our taxes, but many have reached a point in their conscience which prevents or makes difficult the payment of the military portion . . . We warmly approve of people following their conscience, and openly approve civil disobedience in this matter under Divine compulsion. We ask all to consider carefully the implications of paying taxes that relate to war-making.

Id. In 1979, the Yearly Meeting went a step further, stating:

> Within the framework of respect for individual conscience, we call upon those Friends who feel ready to do so to begin now to refuse to pay taxes for military purposes. We call upon all Friends to continue to search themselves deeply on the question of their responsibility to separate themselves from preparations for war. . . . We support with spiritual, moral, legal and material aid . . . those Friends who are led to refuse payment of war taxes.

Id.

PYM supported the Friends Committee on National Legislation in their leadership role in working for Congressional passage of the Religious Freedom Restoration Act (hereinafter "RFRA") in 1993. PYM and many others in the Religious Society of Friends hoped and expected that this legislation would protect the exercise of religious conscience where such exercise could be accommodated without demonstrable harm to any compelling governmental interest.

The involvement of PYM in this case has another dimension. The Society of Friends works with a member who desires assistance in addressing a matter of conscience, in order to determine whether the member's actions or proposed actions follow a "leading" from God.[2] Friends do this through "clearness" committees. Friends generally do not recognize an individual's "concern" as a "leading" which justifies action until it has been tested and challenged in a clearness process, in which the individual receives guidance, aid and (if found to be appropriate) encouragement from other members of the meeting, serving as a clearness committee. Pet. App. A35, A40; *Faith and Practice* 29, 178-79 (1997).[3] PYM adopted a policy in 1983 that employees seek "clearness" from their own meetings for their military tax refusal

---

[2] In Quaker terminology, a "leading" is a sense of being drawn or called by God in a particular direction, or toward a particular course of action. Pet. App. A35.

[3] *Faith and Practice*, revised from time to time since the 17th century, is the corporate statement of beliefs and procedures intended to inform individuals and meetings in the conduct of their lives as Quakers. Philadelphia Yearly Meeting's most recent edition is 1997.

undertaken as an expression of Friends Peace Testimony.[4] Pet. App. A35. Petitioner in this case has convened three separate clearness committees at the Haddonfield Monthly Meeting since 1984 to help her discern God's leading with respect to her tax resistance. Pet. App. A36-A37. The consistent result of that process has been an affirmation of petitioner's sincerity and the rightness of her course of action.

PYM considers it a sacred duty to support the conscientious actions of its individual members, especially in such historic witness as the Peace Testimony.

B. Interest as an Employer

As the employer of petitioner Adams and some 50 others, PYM has addressed the need for an administrative policy regarding war tax refusal. The issue has arisen in connection with (1) IRS levies on salaries and (2) paying withheld taxes to the IRS. In both contexts, PYM is placed under government compulsion to cooperate in the collection of taxes from an employee who refuses as a matter of religious conscience to pay the portion of his/her taxes which are used for military purposes.

---

[4] The 1983 policy statement of the Philadelphia Yearly Meeting of the Religious Society of Friends also provided that "taxes not paid should be re-directed to an alternative or escrow fund, or to a recognized charitable cause." *P.Y.M. Staff Manual*, War Taxes, IRS Levies and Liens, § H, ¶ 3, p. III-4 (1986 ed.). Petitioner Adams has set aside any amounts due for taxes which have not been paid or withheld, and loans these amounts at no interest to organizations which she believes are working to create a better world. Pet. App. A36.

In 1975, PYM adopted the following policy regarding IRS levies on the salaries of its employees who were military tax refusers:

> Philadelphia Yearly Meeting should refuse to honor a levy or to pay over the money voluntarily, setting forth our belief that it is wrong to force an employee to violate his/her conscience.

Minutes of PYM Representative Meeting (Apr. 24, 1975) (held in Archives, Friends Historical Library, Swarthmore College, Swarthmore, Pennsylvania).

PYM followed this policy in 1985 and 1986 when it declined to honor IRS notices of levy on the salary of two of its employees who were war tax refusers. The litigation which followed predated the Religious Freedom Restoration Act. In *United States v. Philadelphia Yearly Meeting of the Religious Society of Friends*, 753 F. Supp. 1300 (E.D. Pa. 1990), the Court held that under *Employment Division v. Smith*, 494 U.S. 872 (1990), announced during the pendency of the PYM case, the law for IRS levies passed constitutional muster, even as applied to violate the core religious principles of an established church, because it was a "neutral, generally applicable regulatory law." 753 F. Supp. at 1300.[5] The Court disallowed the 50 percent

---

[5] Even so, the United States District Judge commented as follows:

> It is ironic that here in Pennsylvania, the woods to which Penn and the Religious Society of Friends came to enjoy the blessings of religious liberty, neither the Constitution nor the Bill of Rights protect the policy of that Society not to coerce or violate the consciences of its employees and members with respect to their

penalty, which the IRS sought under IRC § 6332 (d)(2), on the basis that PYM had "reasonable cause" not to comply with the levy because it reasonably believed that it would prevail in its legal challenge to the levy. 753 F. Supp. at 1305. Had the Religious Freedom Restoration Act then been in effect, and had its standards been properly applied, the outcome of this case against PYM might have been quite different. *See American Friends Service Committee v. United States,* 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on procedural grounds,* 419 U.S. 7 (1974) (per curiam).

In 1988, PYM formally addressed the issues raised by its role as an employer in withholding compensation for tax purposes from employees who refused as a matter of conscience to pay taxes for military purposes. Pet. App. A47. The written policy adopted by PYM affirms the commitment of PYM not to act in a manner which would violate the conscience of an employee expressing this historic testimony of the Religious Society of Friends, and carefully articulates the conditions under which PYM will not forward withheld taxes to the IRS. The policy requires that the employee have received "clearness" for military tax refusal, and provides for full withholding and reporting to the IRS concerning employee compensation and withholding. The IRS is informed that the portion of the amount withheld from the employee and not remitted to the IRS has been credited to a special purpose fund and invested on a short term basis, with interest being added to the withheld amount. The IRS is further informed that

---

religious principles, or to act as an agent for our government in so doing.

753 F. Supp. at 1306.

the unremitted withholding, plus interest, will be paid over to the IRS on behalf of the employee at such time as there is assurance that the taxes will not be used for military purposes. The unremitted withholding is limited to the percentage of taxes used for military purposes, as determined by PYM. The effect of the implementation of this policy is that the IRS has imposed interest and penalties on the unremitted withheld taxes (and on one occasion on the entire amount of taxes withheld for all PYM employees); has levied on a bank account of PYM for the taxes, interest and penalties; and has sometimes imposed additional penalties in connection with the levy.

ARGUMENT

A. The Importance of the Issue Presented by the Petition for Writ of Certiorari

The free exercise of religion is one of the cherished liberties guaranteed to the people by the Bill of Rights. RFRA affirmed and expanded this fundamental liberty by requiring that any substantial governmental burden on the free exercise of religion be imposed only by the "least restrictive means." Yet, according to the United States Court of Appeals for the Third Circuit, neither in assessing taxes nor in collecting taxes does the IRS have any obligation even to consider accommodating deeply held religious convictions of Friends against war, despite the plain language of RFRA's broad provisions.

The accommodation sought by petitioner in this case, and sought by PYM in its role as an employer of this and other taxpayers who express the Society of Friends' Peace

Testimony, is relief from use of their tax dollars for war purposes or, at the least, relief from fines or penalties when their accounts are levied in lieu of "voluntary" payment of military taxes. This modest accommodation does not involve non-collection of any tax, nor an impact on the Congressional budget or on Congress' appropriation of tax dollars.

This issue is of overriding importance to PYM and its 12,000 members. Over the past thirty-plus years, more than three hundred members of PYM have refused to pay some portion of their federal taxes. In so doing, they were and are acting not only for themselves, but they also were and are expressing the 340-year-old Peace Testimony of the Religious Society of Friends. Thus, the refusal by the IRS to consider accommodation in this case affects all members of PYM, and the Society of Friends itself, by substantially penalizing an exercise of religious conscience and deeply held religious conviction.

Today, many Friends recognize that the nature of modern warfare as supported by the U.S. Government is less a matter of manpower and more a matter of resources to fund the high technologies now utilized. Accordingly, in the years since World War II, war tax refusal has been continuously before PYM either in annual session or in the periodic administrative gatherings formerly known as Representative and now Interim Meeting. PYM has repeatedly taken formal action to support war tax refusal acts of conscience. PYM has also acted to create means of support. In 1978 PYM reestablished the historic Fund For Sufferings, allocating money from the PYM budget for legal and material assistance to those who witness in conscience for the Peace

Testimony.[6] In 1980, PYM created the War Tax Concerns Support Committee, composed of member volunteers to offer guidance to members considering war tax resistance. PYM continues to assign paid staff to this committee and to bear the direct costs associated with corporate support of Petitioner's witness.

The importance of these religious matters is not limited to PYM. Many members of the Religious Society of Friends, wherever they reside, are similarly affected. This is demonstrated by the respective Petitions for Writ of Certiorari to the United States Court of Appeals for the Second Circuit in *Browne v. United States*, No. 99-632, where the Quaker taxpayers reside in Vermont, within New England Yearly Meeting, and *United States v. Packard*, 1999 WL 500797 (2d Cir. June 1, 1999), *rehearing denied*, ___ F.3d ___ (Nov. 19, 1999), where the Quaker taxpayer resides in Connecticut, within New York Yearly Meeting. Both of these cases involve members of the Religious Society of Friends who have refused, as a matter of conscience, to pay some or all of their taxes, yet were refused accommodation in the matter of penalties. Many Mennonites and Church of the Brethren adherents participate in the same witness, as do individuals of much larger Christian and non-Christian denominations. Many national religious organizations have recognized that conscientious objection to the payment of federal taxes for military preparation should be accommodated

---

[6] From the mid-1600's in England, the Religious Society of Friends established Funds For Sufferings for relief of Friends and their families who experienced religious persecution.

by government. *See* Bernd G. Janzen, *Communities of Conscience: Collected Statements on Conscience and Taxes for Military Preparations* (Peace Tax Foundation 2d ed.).

B. The Holding by the United States Court of Appeals for the Third Circuit Is Inconsistent With the Religious Freedom Restoration Act

The petitioner in this case, and the petitioners in the two similar cases in the Second Circuit, have been accorded no accommodation whatsoever, or even consideration of accommodation, by the IRS, either in the use of their tax dollars or in the imposition of penalties. Despite recognition by the government and the lower courts that these taxpayers acted on the basis of deeply held religious convictions, they have been treated as though they were negligent or otherwise acting without any reasonable basis.[7]

The Opinion of the United States Court of Appeals for the Third Circuit in this case contradicts the plain language of the Religious Freedom Restoration Act. RFRA, as its name confirms, was intended to supersede *Employment Division v. Smith*, 494 U.S. 872 (1990). *See City*

---

[7] In her Petition for Writ of Certiorari, petitioner contends that her deeply held religious views were not given the consideration which the Internal Revenue Service gives to other individual circumstances. See Petition for Writ of Certiorari, pages 20-28. She argues that the failure to give equal consideration to her religious obligations violated *Sherbert v. Verner*, 374 U.S. 398 (1963), as explained in *Employment Division v. Smith*, 494 U.S. at 884. PYM supports this ground for reversal, as well as the ground for reversal based upon the Religious Freedom Restoration Act.

of Boerne v. Flores, 521 U.S. 507 (1997). The statute, by its terms, requires that the government *demonstrate* that the burden which it has placed on the exercise of religion "is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. § 2000bb-1. " '[D]emonstrates' means meets the burden of going forward with the *evidence* and of persuasion." *Id.* § 2000bb-2(3) (emphasis added). *See United States v. Bauer*, 84 F. 3d 1549, 1558 (9th Cir. 1996) (Noonan, J.). In this case, the respondent presented no evidence whatsoever on the issue of least restrictive means and thus patently failed to meet its burden of proof at trial.

Although it was not petitioner's burden to present evidence concerning less restrictive alternatives, there were clearly such alternatives to be considered. Relatively minor accommodations to taxpayers' deeply held religious convictions would promote full reporting and prompt payment or collection. Petitioner has consistently reminded amicus PYM that she would willingly pay all taxes if given appropriate assurance that her payments would not be used for military or other war related purposes. This would not affect the overall allocations of tax dollars in accordance with the budget approved by Congress.[8]

---

[8] Proposed legislation to establish a Religious Freedom Peace Tax Fund illustrates one means for making this accommodation. H.R. 1454, 106th Congress, 1st Session, provides for a separate account to be established by the Secretary of the Treasury for a taxpayer who certifies in writing to the Secretary that he/she is "opposed to participation in war in any form based upon the taxpayer's deeply held moral, ethical, or religious beliefs or training (within the meaning of

Petitioner could also have been accommodated in the collection process. Imposition of penalties is a harsh and ineffective sanction for persons exercising fundamental religious convictions. Where the account(s) of the taxpayer, and his/her employer, have been identified to the IRS, and full reporting of income and timely withholding of wages have taken place, penalties are punitive only. They do not enhance compliance. Nor has petitioner benefitted financially; she has taken actions to ensure that she not derive any material or pecuniary benefit from her refusal to pay war taxes. Under RFRA, accommodation to petitioner in the imposition and collection of taxes should have been explored. Without demonstration, by evidence from the IRS, it certainly cannot be said that arrangements protecting the Government's interest and at the same time accommodating petitioner's religious convictions could not have been made.

CONCLUSION

This case is central to the ability of Friends to live fully in the light of God's will, which both the First Amendment and RFRA were intended to facilitate. Congress has reaffirmed and amplified the founding principle of free exercise of religion in RFRA. It is for this Court to require that the statute be implemented in accordance

---

the Military Selective Service Act,. . . . " Tax dollars deposited in this account would not be used for war purposes, as defined in the bill.

with its terms. The petition for certiorari should accordingly be granted, and the judgment of the Court of Appeals reversed.

Respectfully submitted,

RICHARD L. BAZELON, Esquire
BAZELON LESS & FELDMAN, P.C.
1515 Market Street, 7th Street
Philadelphia, PA 19102

Attorney for Amicus Curiae
Philadelphia Yearly Meeting

December 23, 1999